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US EPA RECORDS CENTER REGION 5



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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:

Statoil Eisenbarth Well Pad Site
Clarington, Ohio

Respondent:

Statoil USA Onshore Properties, Inc.

ADMINISTRATIVE SETTLEMENT
AGREEMENT AND ORDER ON
CONSENT FOR REMOVAL ACTION

Docket No. **V-W-14-C-012**

Proceeding Under Sections 104, 106(a), 107
and 122 of the Comprehensive
Environmental Response, Compensation,
and Liability Act, as amended, 42 U.S.C.
§§ 9604, 9606(a), 9607 and 9622

I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent (Settlement Agreement) is entered into voluntarily by the United States Environmental Protection Agency (U.S. EPA) and Statoil USA Onshore Properties, Inc. ("Respondent"). This Settlement Agreement provides for the performance of removal actions by Respondent and the payment of certain response costs incurred by the United States at or in connection with the Statoil Eisenbarth Well Pad Site generally located at 42240 Long Ridge Road in Clarington, Monroe County, Ohio.

2. This Settlement Agreement is issued under the authority vested in the President of the United States by Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622. This authority has been delegated to the Administrator of the U.S. EPA by Executive Order No. 12,580, January 23, 1987, 52 Federal Register 2,923, and further delegated to the Regional Administrators by U.S. EPA Delegation Nos. 14-14-A, 14-14-C and 14-14-D, and to the Director, Superfund Division, Region 5, by Regional Delegation Nos. 14-14-A, 14-14-C and 14-14-D.

3. U.S. EPA has notified the State of Ohio (the "State") of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

4. U.S. EPA and Respondent recognize that this Settlement Agreement has been negotiated in good faith and that the actions undertaken by Respondent in accordance with this Settlement Agreement do not constitute an admission of any liability. Respondent does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the findings of facts, conclusions of law, and determinations in Sections IV (Findings Of Fact) and V (Conclusions Of Law And Determinations) of this Settlement Agreement. Respondent agrees to comply with and be bound by the terms of this Settlement Agreement and further agrees that it will not contest the basis or validity of this Settlement Agreement or its terms in any action by U.S. EPA or the United States to implement or enforce this Settlement Agreement.

II. PARTIES BOUND

5. This Settlement Agreement applies to and is binding upon U.S. EPA and upon Respondent and its successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Settlement Agreement.

6. Respondent shall ensure that its contractors, subcontractors, and representatives comply with this Settlement Agreement. Respondent shall be responsible for any noncompliance

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III. DEFINITIONS

7. Unless otherwise expressly provided in this Settlement Agreement, terms used in this Settlement Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement, the following definitions shall apply:

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675.

"Day" shall mean a calendar day unless otherwise specified. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

"Effective Date" shall be the effective date of this Settlement Agreement as provided in Section XXIX (Effective Date).

"Eisenbarth Well Pad" shall mean the crude petroleum and natural gas extraction facility located at 42240 Long Ridge Road, Clarington, Monroe County, Ohio.

"Future Response Costs" shall mean all costs, not inconsistent with the National Contingency Plan, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Settlement Agreement, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Settlement Agreement on or after the Effective Date of this Settlement Agreement. Future Response Costs shall also include, but not be limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Paragraph 23 including, but not limited to, costs and attorneys fees and any monies paid to secure access, including, but not limited to, the amount of just compensation), and Paragraph 33 (emergency response).

"Interest" shall mean interest at the rate specified for interest on investments of the U.S. EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

"National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42

U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

"Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral or an upper or lower case letter.

"Parties" shall mean EPA and Respondent.

"Past Response Costs" shall mean all costs, not inconsistent with the National Contingency Plan, including, but not limited to, direct and indirect costs, that the United States incurred at or in connection with the Site prior to the Effective Date of this Settlement Agreement.

"RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901, *et seq.* (also known as the Resource Conservation and Recovery Act).

"Respondent" shall mean Statoil USA Onshore Properties, Inc.

"Section" shall mean a portion of this Settlement Agreement identified by a Roman numeral.

"Settlement Agreement" shall mean this Administrative Settlement Agreement and Order on Consent.

"Site" shall mean the Eisenbarth Well Pad as defined above, the catch basins and drainage tiles to the south and west of the Eisenbarth Well Pad that provide drainage from the Eisenbarth Well Pad to the unnamed tributary of Opossum Creek, the area south and west of the Eisenbarth Well Pad over which runoff flowed from the Eisenbarth Wall Pad to the unnamed tributary of Opossum Creek as described in Paragraph 8(m), the unnamed tributary of Opossum Creek located west of the Eisenbarth Well Pad and flowing north of the Eisenbarth Well Pad, and Opossum Creek, from the inlet of the unnamed tributary to its confluence with the Ohio River, all of which is approximately depicted in yellow highlighting on Exhibit A.

"State" shall mean the State of Ohio.

"United States" shall mean the United States of America and each department, agency, and instrumentality of the United States, including U.S. EPA.

"U.S. EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

"Waste Material" shall mean 1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); 2) any pollutant or contaminant under Section 101(33) of

CERCLA, 42 U.S.C. § 9601(33); and 3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

"Work" shall mean all activities Respondent is required to perform under this Settlement Agreement.

IV. U.S. EPA'S FINDINGS OF FACT

8. Based on available information, including the Administrative Record in this matter, U.S. EPA hereby finds that:

- a. Respondent is a corporation licensed to do business in the state of Ohio.
- b. Respondent is the current owner and/or an operator of the Eisenbarth Well Pad.
- c. The Eisenbarth Well Pad is approximately one and a half miles from Opossum Creek, which flows into the Ohio River.
- d. Drainage from the Eisenbarth Well Pad enters a tributary to Opossum Creek via surface flow and through catch basins and drainage tiles and ultimately flows into the Ohio River approximately 5.5 miles from the Eisenbarth Well Pad.
- e. Based on sampling conducted in 2009, Opossum Creek is categorized as a Superior High Quality Water, as defined in Ohio Admin. Code 3745-1-05, by the State.
- f. A trailer containing compressed gas cylinders was present at the Eisenbarth Well Pad on June 28, 2014. In addition, an oxidizer (sodium persulfate) was located underneath the trailer in a containment device.
- g. Over 40 tanks, trucks, totes and drums were located on the Eisenbarth Well Pad on June 28, 2014 related to hydraulic fracturing operations. These tanks, trucks, totes and drums held a number of materials, which included but are not limited to: diesel fuel, motor oil, hydraulic oil, mineral oil, hydrochloric acid (28% by volume), ethylene glycol, monoethanolamine borate, hydrotreated light petroleum distillate, terpenes, terpenoids, isopropanol, polyoxyalkylenes, paraffinic solvents, and a chemical used as a biocide that contained tributyl tetradecyl phosphonium chloride. Hydrochloric acid is a listed hazardous substance.
- h. At approximately 9:00 am EDT on June 28, 2014, a fire, followed by an explosion, occurred at the Eisenbarth Well Pad. The fire spread to equipment described in Paragraph 8(g). Most of that equipment was compromised in the fire,

and the contents, which included the materials listed in Paragraph 8(g), were released.

- i. On June 28, 2014, subsequent to the explosions and the fire that engulfed the crane on the well pad, fluid that had been located above the surface of the Eisenbarth Well Pad and that had been pumped down the well as part of hydraulic fracturing operations flowed back up the well and onto the well pad uncontained.
- j. Local firefighters arrived at the Eisenbarth Well Pad at approximately 9:40 am EDT on June 28, 2014 and began efforts to contain the fire. In addition, a water curtain was utilized to prevent the fire from compromising the trailer containing the compressed gas cylinders and the oxidizer located underneath the trailer.
- k. At approximately 3:00 pm EDT on June 28, 2014, the National Response Center received a request for air monitoring and sampling support from U.S. EPA. Upon arrival, U.S. EPA representatives observed numerous areas of fire on the Eisenbarth Well Pad and runoff from the Eisenbarth Well Pad.
- l. Runoff from the Eisenbarth Well Pad at and after 9:00 am EDT on June 28, 2014 included materials that had been located on the Eisenbarth Well Pad as described in Paragraph 8(g), fluid from the well head as described in Paragraph 8(i), and water from the firefighting processes.
- m. The runoff described in Paragraph 8(l) flowed off the Eisenbarth Well Pad to the south and the west via surface flow and catch basins and drainage tiles, entering the unnamed tributary of Opossum Creek.
- n. On June 29 and 30, 2014, the Ohio Department of Natural Resources Division of Wildlife investigated and reported dead aquatic life, including, but not limited to, fish, salamanders, and crayfish in the unnamed tributary of Opossum Creek downstream of the Eisenbarth Well Pad and in Opossum Creek downstream of the Eisenbarth Well Pad until approximately one-half mile upstream of its confluence with the Ohio River.
- o. Commencing on June 28, 2014 and continuing through the Effective Date of this Settlement Agreement until such time as the Work Plan prepared pursuant to this Settlement Agreement has been approved by EPA, Respondent is, and has been, performing response actions with oversight of the federal and state On-Scene Coordinators ("OSC"), including monitoring, sampling, testing, assessing, and evaluating the air, surface water, ground water, surface and subsurface soil, and sediment at the Eisenbarth Well Pad and the Site, as those terms are defined herein, and portions of the Ohio River.

V. U.S. EPA'S CONCLUSIONS OF LAW AND DETERMINATIONS

9. Based on the Findings of Fact set forth above, and the Administrative Record supporting this removal action, U.S. EPA has determined that:

- a. The Eisenbarth Well Pad is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
- b. The materials stored at the Eisenbarth Well Pad, as identified in the Findings of Fact above, include "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and "pollutants or contaminants" as defined by Section 101(33) of CERCLA, 42 U.S.C. § 9601(33).
- c. Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
- d. Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is liable for performance of response actions and for response costs incurred and to be incurred at the Site.
- e. Respondent is the "owner" and/or an "operator" of the facility, as defined by Section 101(2) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).
- f. Respondent is the "owner" and/or an "operator" of the facility at the time of disposal of hazardous substances, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).
- g. The conditions as described in the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility into the "environment" as defined by Sections 101(22) and 101(8) of CERCLA, 42 U.S.C. §§ 9601(22) and 9601(8).
- h. The conditions as described in the Findings of Fact above constitute an actual or threatened "release" of a pollutant or contaminant from the facility into the "environment," as defined by Sections 101(22) and 101(8) of CERCLA, 42 U.S.C. §§ 9601(22) and 9601(8), which may present an imminent and substantial danger to the public health or welfare.
- i. The conditions present at the Site constitute a threat to public health, welfare, or the environment based upon the factors set forth in Section 300.415(b)(2) of the National

Oil and Hazardous Substances Pollution Contingency Plan, as amended (NCP), 40 C.F.R. § 300.415(b)(2).

- j. The removal action required by this Settlement Agreement is necessary to protect the public health, welfare, or the environment and, if carried out in compliance with the terms of this Settlement Agreement, will be consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.

VI. SETTLEMENT AGREEMENT AND ORDER

10. Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for this Site, it is hereby Ordered and Agreed that Respondent shall comply with all provisions of this Settlement Agreement, including, but not limited to, all documents expressly incorporated by reference into this Settlement Agreement.

VII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND ON-SCENE COORDINATOR

11. Respondent has selected, and U.S. EPA has not disapproved, a contractor known as Center for Toxicology and Environmental Health, LLC ("CTEH") to perform the Work. Respondent shall notify U.S. EPA of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the Work at least 5 business days prior to commencement of such Work. U.S. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Respondent. If U.S. EPA disapproves of a selected contractor, Respondent shall retain a different contractor and shall notify U.S. EPA of that contractor's name and qualifications within 3 business days of U.S. EPA's disapproval.

12. Respondent has designated, and U.S. EPA has not disapproved, Mr. Joseph Swearman as Project Coordinator, who shall be responsible for administration of all actions by Respondent required by this Settlement Agreement. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available (e.g., via telephone) during Site work. U.S. EPA retains the right to disapprove of the designated Project Coordinator. If U.S. EPA disapproves of the designated Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify U.S. EPA of that person's name, address, telephone number, and qualifications within 4 business days following U.S. EPA's disapproval. Receipt by Respondent's Project Coordinator of any notice or communication from U.S. EPA relating to this Settlement Agreement shall constitute receipt by Respondent.

13. U.S. EPA has designated James Justice of the Emergency Response Branch #1, Region 5, as its OSC. Except as otherwise provided in this Settlement Agreement, Respondent shall direct all submissions required by this Settlement Agreement to the OSC at U.S. EPA Region-5, 25063 Center Ridge Road, Westlake, Ohio 44145. Respondent is encouraged to make

submissions to U.S. EPA electronically or on recycled paper (which includes significant post consumer waste paper content where possible) and using two-sided copies.

14. U.S. EPA and Respondent shall have the right, subject to Paragraphs 12 and 13, to change their respective designated OSC or Project Coordinator. U.S. EPA shall notify the Respondent, and Respondent shall notify U.S. EPA, as early as possible before such a change is made, but in no case less than 24 hours before such a change. The initial notification may be made orally but shall be promptly followed by a written notice, which may be submitted electronically via e-mail.

VIII. WORK TO BE PERFORMED

15. Respondent shall perform, at a minimum, the following removal actions:

- a. Conduct an evaluation that includes the following:
 - i. Monitor, sample, and assess surface and subsurface pathways by which materials released from the Eisenbarth Well Pad on and after 9:00 am EDT on June 28, 2014 migrated to the unnamed tributary of Opossum Creek referred to in Paragraph 8(d).
 - ii. Monitor, sample, and assess surface waters and sediments of the unnamed tributary of Opossum Creek, Opossum Creek, and the portion of the Ohio River from the confluence with Opossum Creek to the first public water intake immediately downstream of that confluence for chemical constituents identified in CTEH's "Environmental Sampling and Analysis Plan, Version 1.7," reviewed by the federal and state OSCs on July 17, 2014.
 - iii. Monitor, sample, and assess surface waters and sediments of the unnamed tributary of Opossum Creek and Opossum Creek to its confluence with the Ohio River for potential acute and chronic toxicological impacts on aquatic life and recovery of aquatic communities.
- b. Prepare and submit for approval to U.S. EPA a written report of the results of the evaluation performed pursuant to Paragraph 15(a).
- c. Upon request by U.S. EPA, prepare and submit a Work Plan for approval by U.S. EPA for response actions to address any hazards and/or imminent and substantial endangerments identified as a result of the work carried out pursuant to Paragraph 15(a). U.S. EPA shall make any such request within 120 Days of the approval of the final report prepared pursuant to Paragraph 15(b).

16. Work Plan and Implementation.

- a. Within 10 business days after the Effective Date, Respondent shall submit to U.S. EPA for approval a draft Work Plan for performing the removal action generally described in Paragraph 15 above. The draft Work Plan shall provide a description of, and an expeditious schedule for, the actions required by this Settlement Agreement. The draft Work Plan may be based on, and/or informed by, activities described in Paragraph 8(o).
- b. U.S. EPA may approve, disapprove, require revisions to, or modify the draft Work Plan in whole or in part. If U.S. EPA requires revisions, Respondent shall submit a revised draft Work Plan within 7 business days of receipt of U.S. EPA's notification of the required revisions. Respondent shall implement the Work Plan as approved in writing by U.S. EPA in accordance with the schedule approved by U.S. EPA. Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement Agreement.
- c. Respondent shall not commence any Work except in conformance with the terms of this Settlement Agreement. Respondent shall not commence implementation of the Work Plan developed hereunder until receiving written U.S. EPA approval pursuant to Paragraph 16(b). Respondent may continue to implement the "Water, Soil, and Sediment Sampling and Analysis Adjustment Plan Version 1.0," reviewed by the federal OSC on July 17, 2014, or any subsequent iteration of that plan, as appropriate.

17. Health and Safety Plan. Within 10 business days after the Effective Date, Respondent shall submit for U.S. EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-site work under this Settlement Agreement. This plan shall be prepared consistent with U.S. EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration (OSHA) regulations found at 29 C.F.R. Part 1910. If U.S. EPA determines that it is appropriate, the plan shall also include contingency planning. Respondent shall incorporate all changes to the plan recommended by U.S. EPA and shall implement the plan during the pendency of the removal action until receipt of U.S. EPA's notification pursuant to Section XXVI (Notice of Completion of Work).

18. Quality Assurance and Sampling.

- a. All sampling and analyses performed pursuant to this Settlement Agreement shall conform to U.S. EPA direction, approval, and guidance regarding sampling, quality assurance/quality control (QA/QC), data validation, and chain of custody procedures. Respondent shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate U.S. EPA guidance. Respondent

shall follow, as appropriate, "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures" (OSWER Directive No. 9360.4-01, April 1, 1990), as guidance for QA/QC and sampling. Respondent shall only use laboratories that have a documented Quality System that complies with ANSI/ASQC E-4 1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2) (EPA/240/B-01/002, March 2001, Reissued May 2006)," or equivalent documentation as determined by U.S. EPA. U.S. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP) as meeting the Quality System requirements.

- b. Upon request by U.S. EPA, Respondent shall have such a laboratory analyze samples submitted by U.S. EPA for QA monitoring. Respondent shall provide to U.S. EPA the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis.
- c. Upon request by U.S. EPA, Respondent shall allow U.S. EPA or its authorized representatives to take split and/or duplicate samples. Respondent shall notify U.S. EPA not less than 3 business days in advance of any sample collection activity, unless shorter notice is agreed to by U.S. EPA. U.S. EPA shall have the right to take any additional samples that it deems necessary. Upon request, U.S. EPA shall allow Respondent to take split or duplicate samples of any samples it takes as part of its oversight of Respondent's implementation of the Work.

19. Reporting.

- a. Respondent shall submit a written progress report to U.S. EPA concerning actions undertaken pursuant to this Settlement Agreement every 30th day after the date of receipt of U.S. EPA's approval of the Work Plan until Respondent's receipt of U.S. EPA's notification pursuant to Section XXVI (Notice of Completion of Work), unless otherwise directed in writing by the OSC. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.
- b. Respondent shall submit 3 copies of all plans, reports or other submissions required by this Settlement Agreement, or any approved work plan. Upon request by U.S. EPA, Respondent shall submit such documents in electronic form.

- c. Until Respondent's receipt of U.S. EPA's notification pursuant to Section XXVI (Notice of Completion of Work), Respondent shall, at least 30 days prior to its conveyance of any interest in real property at the Site, give written notice to the transferee that the property is subject to this Settlement Agreement and written notice to U.S. EPA of the proposed conveyance, including the name and address of the transferee. Respondent also agrees, until such time as Respondent receives U.S. EPA's notification pursuant to Section XXVI (Notice of Completion of Work), to require that successors to property at the Site currently owned or controlled by Respondent comply with the immediately preceding sentence and Sections IX (Site Access) and X (Access to Information).

20. Final Report. Within 60 days after completion of all Work required by Section VIII (Work To Be Performed) of this Settlement Agreement, Respondent shall submit for U.S. EPA review and approval a final report summarizing the actions taken to comply with this Settlement Agreement. The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Settlement Agreement, a listing of quantities and types of materials removed off-site or handled on-site from June 28, 2014 through the completion of all Work on the Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (*e.g.*, manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

"Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

21. Off-Site Shipments.

a. Until Respondent's receipt of U.S. EPA's notification pursuant to Section XXVI (Notice of Completion of Work), Respondent shall, prior to any off-site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification of such shipment of Waste Material to the appropriate state environmental official in the receiving facility's state and to the OSC. However, this notification requirement shall not apply to any off-site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

- i. Respondent shall include in the written notification the following information: 1)

the name and location of the facility to which the Waste Material is to be shipped; 2) the type and quantity of the Waste Material to be shipped; 3) the expected schedule for the shipment of the Waste Material; and 4) the method of transportation. Respondent shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

ii. The identity of the receiving facility and state will be determined by Respondent following the award of the contract for the removal action. Respondent shall provide the information required by Paragraph 21(a) and 21(b) as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

b. Until Respondent's receipt of U.S. EPA's notification pursuant to Section XXVI (Notice of Completion of Work) before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-site location, Respondent shall obtain U.S. EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondent shall only send hazardous substances, pollutants, or contaminants from the Site to an off-site facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence.

IX. SITE ACCESS

22. If the Site, or any other property where access is needed to implement this Settlement Agreement, is owned or controlled by the Respondent, Respondent shall, commencing on the Effective Date, provide U.S. EPA and its representatives, including contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Settlement Agreement.

23. Where any action under this Settlement Agreement is to be performed in areas owned by or in possession of someone other than Respondent, Respondent shall use best efforts to obtain all necessary access agreements within 10 business days after the Effective Date, or as otherwise specified in writing by the OSC. Respondent shall immediately notify U.S. EPA if after using its best efforts it is unable to obtain such agreements. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access. Respondent shall describe in writing its efforts to obtain access. U.S. EPA may then assist Respondent in gaining access, to the extent necessary to effectuate the response actions described in this Settlement Agreement, using such means as U.S. EPA deems appropriate. Respondent shall reimburse U.S. EPA for all costs and attorney's fees incurred by the United States in obtaining such access, in accordance with the procedures in Section XV (Payment of Response Costs).

24. Notwithstanding any provision of this Settlement Agreement, U.S. EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

X. ACCESS TO INFORMATION

25. Respondent shall provide to U.S. EPA, upon request, copies of all documents and information within its possession or control or that of its contractors or agents relating to activities at the Site or to the implementation of this Settlement Agreement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Respondent shall also make available to U.S. EPA, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

26. Respondent may assert business confidentiality claims covering part or all of the documents or information submitted to U.S. EPA under this Settlement Agreement to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by U.S. EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to U.S. EPA, or if U.S. EPA has notified Respondent that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Respondent.

27. Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondent asserts such a privilege in lieu of providing documents, Respondent shall provide U.S. EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the contents of the document, record, or information; and 6) the privilege asserted by Respondent. However, no documents, reports or other information required to be created or generated by this Settlement Agreement shall be withheld on the grounds that they are privileged or confidential.

28. No claim of privilege or confidentiality shall be made with respect to any data relating to implementation of this Settlement Agreement, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XI. RECORD RETENTION

29. Until 10 years after Respondent's receipt of U.S. EPA's notification pursuant to Section XXVI (Notice of Completion of Work), Respondent shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. Until 10 years after Respondent's receipt of U.S. EPA's notification pursuant to Section XXVI (Notice of Completion of Work), Respondent shall also instruct its contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to performance of the Work.

30. At the conclusion of this document retention period, Respondent shall notify U.S. EPA at least 90 days prior to the destruction of any such records or documents, and, upon request by U.S. EPA, Respondent shall deliver any such records or documents to U.S. EPA. Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondent asserts such a privilege, Respondent shall provide U.S. EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted by Respondent. However, no documents, reports or other information required to be created or generated by this Settlement Agreement shall be withheld on the grounds that they are privileged or confidential.

31. Respondent hereby certifies that to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Site since the earlier of notification of potential liability by U.S. EPA or the State or the filing of suit against it regarding the Site.

XII. COMPLIANCE WITH OTHER LAWS

32. Respondent shall perform all actions required pursuant to this Settlement Agreement in accordance with all applicable local, state, and federal laws and regulations except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 6921(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on Site actions required pursuant to this Settlement Agreement shall, to the extent practicable, as determined by U.S. EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements (ARARs) under federal environmental or state environmental or facility siting laws. Respondent shall identify ARARs, to the extent ARARs are appropriate based on the removal actions

described in Paragraph 15, in the Work Plan subject to U.S. EPA approval.

XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

33. In the event of any action or occurrence during performance of the Work that causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action. Respondent shall take these actions in accordance with all applicable provisions of this Settlement Agreement, including, but not limited to, the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondent shall also immediately notify the OSC or, in the event of his unavailability, the Regional Duty Officer, Emergency Response Branch #1, Region 5 at (312) 353-2318, of the incident or Site conditions. In the event that Respondent fails to take appropriate response action as required by this Paragraph, and U.S. EPA takes such action instead, Respondent shall reimburse U.S. EPA all costs of the response action not inconsistent with the NCP pursuant to Section XV (Payment of Response Costs).

34. In addition, in the event of any release of a hazardous substance from the Eisenbarth Well Pad, until receipt of U.S. EPA's notification pursuant to Section XXVI (Notice of Completion of Work), Respondent shall immediately notify the U.S. EPA phone duty officer at (312) 353-2318 and the National Response Center at (800) 424-8802, and submit a written report to the OSC within 7 business days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, *et seq.*

XIV. AUTHORITY OF ON-SCENE COORDINATOR

35. The OSC shall be responsible for overseeing Respondent's implementation of this Settlement Agreement. Additionally, nothing in this Settlement Agreement shall otherwise limit the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any Work required by this Settlement Agreement, or to direct any other removal action at the Site that is not otherwise required by, and thus is not subject to, this Settlement Agreement. If the OSC directs any other removal action at the Site, the Parties may enter into a separate settlement agreement and administrative order on consent to govern such additional removal action, or, if the Parties do not enter into a separate settlement agreement and administrative order on consent, EPA may exercise its authority under CERCLA to order Respondent or any potentially responsible party to perform such removal action. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

XV. PAYMENT OF RESPONSE COSTS

36. Payments for Response Costs.

a. Respondent shall pay U.S. EPA all Past and Future Response Costs (Response Costs) not inconsistent with the NCP. On a periodic basis, U.S. EPA will send Respondent a bill requiring payment that consists of an Itemized Cost Summary. Respondent shall make all payments within 30 days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 38 of this Settlement Agreement according to the following procedures

- i. Respondent shall make all payments required by this Paragraph to U.S. EPA by Fedwire EFT to:

Federal Reserve Bank of New York,
ABA # 021030004
Account = 68010727
SWIFT address = FRNYUS33,
33 Liberty Street,
New York, NY, 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency" and shall reference Site/Spill ID Number C53G and the U.S. EPA docket number for this action.

ii. If the amount demanded in the bill is \$10,000 or less, Respondent may, in lieu of the procedures in subparagraph 36(a)(i), make all payments required by this Paragraph by official bank check made payable to "U.S. EPA Hazardous Substance Superfund". Each check, or a letter accompanying each check, shall identify the name and address of the party or parties making payment, the Site name, U.S. EPA Region 5, the Site/Spill ID Number C53G and, if any, the U.S. EPA docket number for this action, and shall be sent to:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

b. At the time of payment, Respondent shall send notice that payment has been made to the Director, Superfund Division, U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois, 60604-3590 and to Sheila McAnaney, Assistant Regional Counsel, 77 West Jackson Boulevard, C-14J, Chicago, Illinois, 60604-3590, and to the U.S. EPA Cincinnati Finance Office by email at acctsreceivable.cinwd@epa.gov, or by mail to: Cincinnati Finance Office, 26 Martin Luther King

Drive, Cincinnati, Ohio 45268. Such notice shall reference Site/Spill ID Number C53G and the EPA docket number for this action.

c. The total amount to be paid by Respondent pursuant to Paragraph 36(a) shall be transferred by U.S. EPA to the U.S. EPA Hazardous Substance Superfund.

37. The Interest on Response Costs shall begin to accrue on the first day following the due date of the bill as provided in Paragraph 36(a) and shall continue to accrue until the date of payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondent's failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section XVIII (Stipulated Penalties).

38. Respondent may contest payment of any Response Costs billed under Paragraph 36 if it determines that U.S. EPA has made a mathematical error, or included a cost item that is not within the definition of Response Costs, or if it believes U.S. EPA incurred excess costs as a direct result of a U.S. EPA action that was inconsistent with the NCP. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to the OSC. Any such objection shall specifically identify the contested Response Costs and the basis for objection. In the event of an objection, Respondent shall within the 30-day period pay all uncontested Response Costs to U.S. EPA in the manner described in Paragraph 36. Simultaneously, Respondent shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of Ohio and remit to that escrow account funds equivalent to the amount of the contested Response Costs. Respondent shall send to the U.S. EPA OSC a copy of the transmittal letter and check paying the uncontested Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, Respondent shall initiate the Dispute Resolution procedures in Section XVI (Dispute Resolution). If U.S. EPA prevails in the dispute, within 5 days of the resolution of the dispute, Respondent shall pay the sums due (with accrued interest) to U.S. EPA in the manner described in Paragraph 36. If Respondent prevails concerning any aspect of the contested costs, Respondent shall pay that portion of the costs (plus associated accrued interest) for which it did not prevail to U.S. EPA in the manner described in Paragraph 36. Respondent shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XVI (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondent's obligation to reimburse U.S. EPA for its Response Costs.

XVI. DISPUTE RESOLUTION

39. Unless otherwise expressly provided for in this Settlement Agreement, the dispute

resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement Agreement. The Parties shall attempt to resolve any disagreements concerning this Settlement Agreement expeditiously and informally.

40. If Respondent objects to any U.S. EPA action taken pursuant to this Settlement Agreement, including billings for Response Costs, Respondent shall notify U.S. EPA in writing of its objection(s) within 10 days of such action, unless the objection(s) has/have been resolved informally. This written notice shall include a statement of the issues in dispute, the relevant facts upon which the dispute is based, all factual data, analysis or opinion supporting the Respondent's position, and all supporting documentation on which such party relies. U.S. EPA and Respondent shall have 10 days from U.S. EPA's receipt of Respondent's written objection(s) to resolve the dispute through formal negotiations. The period for formal negotiations may be extended at the sole discretion of U.S. EPA. If the parties are unable to reach a written agreement by the conclusion of the formal negotiation period, U.S. EPA shall provide its Statement of Position, including supporting documentation, no later than 10 days after the formal negotiation period concludes. In the event that these 10-day time periods for exchange of written documents may cause a delay in the work, they shall be shortened upon, and in accordance with, notice by U.S. EPA. An administrative record of any dispute under this Section shall be maintained by U.S. EPA. The record shall include the written notification of such dispute, and the Statement of Position served pursuant to the preceding Paragraph. Upon review of the administrative record, the Director of the Superfund Division, U.S. EPA Region 5, shall resolve the dispute consistent with the NCP and the terms of this Settlement Agreement. U.S. EPA's decision shall be incorporated into and become an enforceable part of this Settlement Agreement.

41. Respondent's obligations under this Settlement Agreement shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with U.S. EPA's decision, whichever occurs.

XVII. FORCE MAJEURE

42. Respondent agrees to perform all requirements of this Settlement Agreement within the time limits established under this Settlement Agreement, unless the performance is delayed by a *force majeure*. For purposes of this Settlement Agreement, a *force majeure* is defined as any event arising from causes beyond the control of Respondent, or of any entity controlled by Respondent, including but not limited to its contractors and subcontractors, which delays or prevents performance of any obligation under this Settlement Agreement despite Respondent's best efforts to fulfill the obligation. *Force majeure* does not include financial inability to complete the Work or increased cost of performance.

43. If any event occurs or has occurred that may delay the performance of any obligation

under this Settlement Agreement, whether or not caused by a *force majeure* event, Respondent shall notify U.S. EPA orally within 24 hours of when Respondent first knew that the event might cause a delay. Within 7 days thereafter, Respondent shall provide to U.S. EPA in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent's rationale for attributing such delay to a *force majeure* event if it intends to assert such a claim; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall preclude Respondent from asserting any claim of *force majeure* for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Respondent shall have the burden of demonstrating by a preponderance of the evidence that the event is a *force majeure*, that the delay is warranted under the circumstances, and that best efforts were exercised to avoid and mitigate the effects of the delay.

44. If U.S. EPA agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Settlement Agreement that are affected by the *force majeure* event will be extended by U.S. EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation. If U.S. EPA does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, U.S. EPA will notify Respondent in writing of its decision. If U.S. EPA agrees that the delay is attributable to a *force majeure* event, U.S. EPA will notify Respondent in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

XVIII. STIPULATED PENALTIES

45. Respondent shall be liable to U.S. EPA for stipulated penalties in the amounts set forth in Paragraphs 46 and 47 for failure to comply with the requirements of this Settlement Agreement specified below, unless excused under Section XVII (Force Majeure). "Compliance" by Respondent shall include completion of the activities under this Settlement Agreement or any work plan or other plan approved under this Settlement Agreement identified below in accordance with all applicable requirements of law, this Settlement Agreement, and any plans or other documents approved by U.S. EPA pursuant to this Settlement Agreement within the specified time schedules established by and approved under this Settlement Agreement.

46. Stipulated Penalty Amounts – Work (Including Payments).

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 46(b):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500	1st through 14th day
\$1,000	15th through 30th day
\$2,500	31st day and beyond

b. Compliance Milestones

Submission of Work Plan	Within 10 Business Days After the Effective Date
Submission of Health and Safety Plan	Within 10 Business Days After the Effective Date

47. Stipulated Penalty Amounts - Reports. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports or other written documents other than those listed in Paragraph 46(b):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$100	1st through 14th day
\$200	15th through 30th day
\$500	31st day and beyond

48. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: 1) with respect to a deficient submission under Section VIII (Work to be Performed), during the period, if any, beginning on the 31st day after U.S. EPA's receipt of such submission until the date that U.S. EPA notifies Respondent of any deficiency; and 2) with respect to a decision by the Director of the Superfund Division, Region 5, under Paragraph 40 of Section XVI (Dispute Resolution), during the period, if any, beginning on the 21st day after U.S. EPA submits its written statement of position until the date that the Director of the Superfund Division issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

49. Following U.S. EPA's determination that Respondent has failed to comply with a requirement of this Settlement Agreement, U.S. EPA may give Respondent written notification of the failure and describe the noncompliance. U.S. EPA may send Respondent a written

demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether U.S. EPA has notified Respondent of a violation.

50. All penalties accruing under this Section shall be due and payable to U.S. EPA within 30 days of Respondent's receipt from U.S. EPA of a demand for payment of the penalties, unless Respondent invokes the dispute resolution procedures under Section XVI (Dispute Resolution). Respondent shall make all payments required by this Section by certified or cashier's check made payable to "U.S. EPA Hazardous Substance Superfund". Each check, or a letter accompanying each check, shall identify the name and address of the party or parties making payment, the Site name, U.S. EPA Region 5, the Site/Spill ID Number C53G, and, if any, the U.S. EPA docket number for this action, and shall be sent to:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

and shall indicate that the payment is for stipulated penalties, and shall reference the name and address of the party or parties making payment. At the time of payment, copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to U.S. EPA as provided in Paragraph 36(b).

51. The payment of penalties shall not alter in any way Respondent's obligation to complete performance of the Work required under this Settlement Agreement.

52. Penalties shall continue to accrue during any dispute resolution period, but need not be paid until 15 days after the dispute is resolved by agreement or by receipt of U.S. EPA's decision.

53. If Respondent fails to pay stipulated penalties when due, U.S. EPA may institute proceedings to collect the penalties, as well as Interest. Respondent shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 49. Nothing in this Settlement Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of U.S. EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Settlement Agreement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(l) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(l), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), provided, however, that U.S. EPA shall not seek civil penalties pursuant to Section 106(b) or 122(l) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided in this Section, except in the case of a willful violation of this Settlement Agreement. Should

Respondent violate this Settlement Agreement or any portion hereof, U.S. EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement of this Settlement Agreement pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606. Notwithstanding any other provision of this Section, U.S. EPA may, in its unreviewable discretion, waive in writing any portion of stipulated penalties that have accrued pursuant to this Settlement Agreement.

XIX. COVENANT NOT TO SUE BY U.S. EPA

54. In consideration of the actions that will be performed and the payments that will be made by Respondent under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, U.S. EPA covenants not to sue or to take administrative action against Respondent pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work, Past Response Costs, and Future Response Costs. This covenant not to sue shall take effect upon the Effective Date of this Settlement Agreement. This covenant not to sue is conditioned upon the complete and satisfactory performance by Respondent of its obligations under this Settlement Agreement, including, but not limited to, payment of Response Costs pursuant to Section XV (Payment of Response Costs). This covenant not to sue extends only to Respondent and does not extend to any other person.

XX. RESERVATIONS OF RIGHTS BY U.S. EPA

55. Except as specifically provided in this Settlement Agreement, nothing in this Settlement Agreement shall limit the power and authority of U.S. EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing in this Settlement Agreement shall prevent U.S. EPA from seeking legal or equitable relief to enforce the terms of this Settlement Agreement, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring the Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law.

56. The covenant not to sue set forth in Section XIX (Covenant Not to Sue by U.S. EPA) above does not pertain to any matters other than those expressly identified therein. U.S. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Respondent with respect to all other matters, including, but not limited to:

- a. Claims based on a failure by Respondent to meet a requirement of this Settlement Agreement;
- b. Liability for costs not included within the definitions of Past Response Costs or Future Response Costs;

- c. Liability for performance of response action other than the Work;
- d. Criminal liability;
- e. Liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- f. Liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and
- g. Liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site.

XXI. COVENANT NOT TO SUE BY RESPONDENT

57. Respondent covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Past Response Costs, Future Response Costs, or this Settlement Agreement, including, but not limited to:

- a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
- b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Ohio Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or
- c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Work, Past Response Costs, or Future Response Costs.

These covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to any of the reservations set forth in Paragraphs 56 (b), (c), and (e) - (g), but only to the extent that Respondent's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

58. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R.

§ 300.700(d).

XXII. OTHER CLAIMS

59. By issuance of this Settlement Agreement, the United States and U.S. EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United States or U.S. EPA shall not be deemed a party to any contract entered into by Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement Agreement.

60. Except as expressly provided in Section XIX (Covenant Not to Sue by U.S. EPA), nothing in this Settlement Agreement constitutes a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Settlement Agreement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

61. No action or decision by U.S. EPA pursuant to this Settlement Agreement shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XXIII. EFFECT OF SETTLEMENT/CONTRIBUTION

62. a. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and that Respondent is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), or as may otherwise be provided by law, for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are the Work, Past Response Costs, and Future Response Costs.

b. The Parties further agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which Respondent has, as of the Effective Date, resolved its liability to the United States for the Work, Past Response Costs, and Future Response Costs.

c. Nothing in this Settlement Agreement precludes the United States or Respondent from asserting any claims, causes of action, or demands for indemnification, contribution, or cost recovery against any persons not party to this Settlement Agreement. Nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection

pursuant to Section 113(f)(2) of CERCLA.

63. Respondent shall, with respect to any suit or claim brought by it for matters related to this Settlement Agreement, notify U.S. EPA in writing no later than 30 days prior to the initiation of such suit or claim. Respondent also shall, with respect to any suit or claim brought against it for matters related to this Settlement Agreement, notify U.S. EPA in writing within 10 days of service of the complaint or claim upon it. In addition, Respondent shall notify U.S. EPA within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Settlement Agreement.

64. In any subsequent administrative or judicial proceeding initiated by U.S. EPA, or by the United States on behalf of U.S. EPA, for injunctive relief, recovery of response costs, or other relief relating to the Site, Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant by U.S. EPA set forth in Section XIX (Covenant Not to Sue by U.S. EPA).

XXIV. INDEMNIFICATION

65. Respondent shall indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Settlement Agreement. In addition, Respondent agrees to pay the United States all costs incurred by the United States, including but not limited to attorney's fees and other expenses of litigation and settlement, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Settlement Agreement. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondent in carrying out activities pursuant to this Settlement Agreement. Respondent or any such contractor shall not be considered agents of the United States. The Federal Tort Claims Act (28 U.S.C. §§ 2671, 2680) provides coverage for injury or loss of property, or injury or death caused by the negligent or wrongful act or omission of an employee of U.S. EPA while acting within the scope of his or her employment, under circumstances where U.S. EPA, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

66. The United States shall give Respondent notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Respondent

prior to settling such claim.

67. Respondent waives all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Respondent shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

XXV. MODIFICATIONS

68. The OSC may make modifications to any plan or schedule in writing or by oral direction. Any oral modification will be memorialized in writing by U.S. EPA promptly, but shall have as its effective date the date of the OSC's oral direction. Any other requirements of this Settlement Agreement may be modified in writing by mutual agreement of the parties.

69. If Respondent seeks permission to deviate from any approved work plan or schedule, Respondent's Project Coordinator shall submit a written request to U.S. EPA for approval outlining the proposed modification and its basis. Respondent may not proceed with the requested deviation until receiving oral or written approval from the OSC pursuant to Paragraph 68.

70. No informal advice, guidance, suggestion, or comment by the OSC or other U.S. EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent shall relieve Respondent of its obligation to obtain any formal approval required by this Settlement Agreement, or to comply with all requirements of this Settlement Agreement, unless it is formally modified.

XXVI. NOTICE OF COMPLETION OF WORK

71. When U.S. EPA determines, after U.S. EPA's review of the Final Report, that all Work has been fully performed in accordance with this Settlement Agreement, with the exception of any continuing obligations required by this Settlement Agreement, including, *e.g.*, payment of Response Costs and record retention, U.S. EPA will provide written notice to Respondent. If U.S. EPA determines that such Work has not been completed in accordance with this Settlement Agreement, U.S. EPA will notify Respondent, provide a list of the deficiencies, and require that Respondent modify the Work Plan if appropriate in order to correct such deficiencies. Respondent shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the U.S. EPA notice. Failure by Respondent

to implement the approved modified Work Plan shall be a violation of this Settlement Agreement.

XXVII. INSURANCE

72. At least 7 days after the Effective Date of this Settlement Agreement, Respondent shall secure, and shall maintain for the duration of this Settlement Agreement until Respondent's receipt of U.S. EPA's notification pursuant to Section XXVI (Notice of Completion of Work), comprehensive general liability insurance and automobile insurance with limits of \$1.0 million dollars, combined single limit. Within the same time period, Respondent shall provide U.S. EPA with certificates of such insurance and a copy of each insurance policy. In addition, for the duration of the Settlement Agreement, Respondent shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondent in furtherance of this Settlement Agreement. If Respondent demonstrates by evidence satisfactory to U.S. EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Respondent need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

XXVIII. SEVERABILITY/INTEGRATION/ATTACHMENTS

73. If a court issues an order that invalidates any provision of this Settlement Agreement or finds that Respondent have sufficient cause not to comply with one or more provisions of this Settlement Agreement, Respondent shall remain bound to comply with all provisions of this Settlement Agreement not invalidated or determined to be subject to a sufficient cause defense by the court's order.

74. This Settlement Agreement constitutes the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Settlement Agreement.

XXIX. EFFECTIVE DATE

75. This Settlement Agreement shall be effective upon receipt by Respondent of a copy of this Settlement Agreement signed by the Director, Superfund Division, U.S. EPA Region 5.

IN THE MATTER OF:

Statoil Eisenbarth Well Pad Site
Clarington, Ohio

The undersigned representative of Respondent certifies that s/he is fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the party s/he represents to this document.

Agreed this 13TH day of AUGUST, 2014.

For Respondent Statoil Onshore Properties, Inc.

By

Jim Claunch

Title:

VICE PRESIDENT

IN THE MATTER OF:

Statoil Eisenbarth Well Pad Site
Clarington, Ohio

The undersigned representative of Respondent certifies that s/he is fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the party s/he represents to this document.

Agreed this 13TH day of AUGUST, 2014.

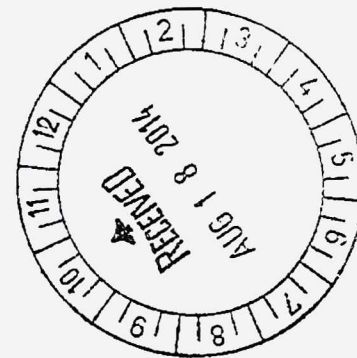
For Respondent Statoil Onshore Properties, Inc.

By

Jim Claunch

Title:

VICE PRESIDENT



IN THE MATTER OF:

Statoil Eisenbarth Well Pad Site
Clarington, Ohio

It is so ORDERED and Agreed this 18 day of AUGUST, 2014

BY:


Richard C. Karl, Director
Superfund Division
United States Environmental Protection Agency
Region 5